

SERVICE DATE – LATE RELEASE JULY 13, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34890

PYCO INDUSTRIES, INC.—FEEDER LINE APPLICATION—
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.

Decided: July 13, 2006

In a decision served on July 3, 2006 (July 3 decision), the Board accepted as complete the feeder line application of PYCO Industries, Inc. (PYCO) to purchase a portion of the lines of South Plains Switching, Ltd. Co. (SAW) and set a procedural schedule.¹ In that decision, the Board stated that PYCO's discovery requests would be deemed propounded on the decision's effective date, July 14, 2006. The discovery sought from SAW includes document requests, interrogatories, and a request for entry onto SAW's lines to conduct an inspection.

PYCO sent SAW a notice modifying the response date for discovery and for entry onto SAW's lines, to which SAW objected in a pleading filed on July 10, 2006. On July 11, 2006, PYCO filed an emergency motion for an order that would require SAW to grant PYCO entry onto SAW's lines beginning on July 24, 2006, and a request for a clarification of a particular due date under the July 3 decision.

As discussed below, the request for entry onto SAW's lines on July 24, 2006, will be granted and the due date for PYCO's amendment (if any) to the valuation of SAW's lines will be clarified. The request for an earlier due date for production of documents and answers to interrogatories will be denied.

BACKGROUND

In a decision served June 2, 2006, in STB Finance Docket No. 34844, PYCO Industries, Inc.—Feeder Line Acquisition—South Plains Switching, Ltd. Co., PYCO's original feeder line application was rejected as incomplete, without prejudice to PYCO filing a new application. PYCO appealed the rejection of its original application and also filed a new application that incorporated the original application. PYCO indicated in the new application that it wished to proceed with the discovery requests that had been attached to the original application. Those discovery requests provided that the production of documents and the answers to interrogatories

¹ The portion of SAW's lines proposed to be acquired is set forth in the July 3 decision, slip op. at 1. The feeder line provision is codified at 49 U.S.C. 10907 and the implementing regulations at 49 CFR part 1151.

would be due within 15 business days and that entry onto SAW's lines would occur on the first Saturday after the 15th business day.

In the July 3 decision, the Board denied PYCO's appeal, found that PYCO's new feeder line application was complete, and set a procedural schedule. The Board also stated that PYCO could propound the discovery requests and could amend its valuation of the lines after it receives responses to those requests. The Board stated that the discovery requests would be deemed to be propounded on the effective date of the July 3 decision, which is July 14, 2006. Therefore, under the instructions in the discovery requests, document production and responses to interrogatories would be due on August 4, 2006 (15th business day after July 14) and entry onto SAW's lines would occur on August 5, 2006 (first Saturday after 15th business day).

PYCO served a notice on SAW purporting to change to July 24, 2006, the date for entry onto SAW's lines and for discovery responses. SAW objected that PYCO did not have authority to unilaterally amend the dates and that it would be a hardship to be required to prepare discovery responses at the same time it was preparing evidence in opposition to the new feeder line application (due on August 2, 2006). SAW also stated that the evidence it submits on August 2 will contain much of the information PYCO seeks in discovery.

In its emergency motion, PYCO seeks an order requiring SAW to produce the requested documents and respond to interrogatories by July 24, 2006, or, at a minimum, to grant PYCO entry onto SAW's lines on that date. PYCO asserts that, by obtaining the information earlier, it could avoid additional rounds of briefing and the attendant delay. PYCO explains that it has made arrangements for its experts to inspect SAW's lines beginning on July 24 and would be prejudiced if they are not able to begin the inspection then, especially because that is the only date before mid-August that one of its experts is available. PYCO also seeks clarification of the portion of the July 3 decision indicating that any amendment to its earlier filed valuation of SAW's lines would be due 7 days after the later of (1) receipt of discovery responses, or (2) completion of its physical inspection of SAW's lines.

DISCUSSION AND CONCLUSIONS

1. Entry Onto SAW's Lines. The limited availability of one of PYCO's experts is a sufficient reason to allow PYCO to enter upon and inspect SAW's lines beginning on July 24, 2006. SAW has not stated that beginning the inspection on that date would harm SAW. Accordingly, SAW shall permit PYCO to enter onto and inspect its lines beginning at 8 a.m. on July 24, 2006. PYCO shall promptly notify SAW when PYCO's experts have completed the inspection.

2. Discovery Responses. As SAW presently is engaged in preparing evidence for submission on or before August 2, 2006, it would be difficult for SAW also to produce documents and answer interrogatories by July 24, 2006. PYCO's ability to submit amended valuations after receiving discovery responses and inspecting the lines will adequately protect its

interests. For these reasons, SAW may produce documents and answer interrogatories within the time provided in the discovery requests, i.e., by August 4, 2006.

3. Clarification. In providing that PYCO may submit any amendment to its earlier valuation 7 days after it receives discovery responses, the Board did not mention whether the due date would also depend upon the date for entry onto SAW's rail lines. Logically, the due date for PYCO's amendment should be 7 days after (1) the completion of the inspection of SAW's lines, (2) the receipt of produced documents, or (3) the receipt of answers to interrogatories, whichever is latest. Therefore, the July 3 decision is clarified to that effect.

It is ordered:

1. SAW shall permit PYCO to enter upon its lines for inspection and related purposes beginning at 8 a.m. on July 24, 2006. PYCO shall promptly inform SAW when it has completed the inspection.

2. PYCO's request for an earlier due date for production of documents and answers to interrogatories is denied.

3. Any amendment by PYCO to its valuation of the rail lines, based upon discovery responses or physical inspection of SAW's lines, must be filed by 7 days after the latest of: (1) completion of physical inspection of SAW's lines, (2) receipt of documents, or (3) receipt of answers to interrogatories.

4. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary